

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Rules and Regulations Implementing the)	WC Docket No. 11-39
Truth in Caller ID Act of 2009)	

**REPLY COMMENTS OF THE NATIONAL NETWORK TO END DOMESTIC
VIOLENCE**

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The National Network to End Domestic Violence (NNEDV) replies to comments filed in response to the Notice of Proposed Rulemaking implementing the Truth in Caller ID Act of 2009.¹

NNEDV's reply addresses three issues. First, NNEDV urges the Commission not to require verification of authority to spoof a particular caller ID, as such a requirement would place a significant burden on those, like victim service providers, using spoofing for positive ends. Second, NNEDV agrees with the Department of Justice that the Commission has statutory authority to regulate spoofing service providers, and urges the Commission to require spoofing services to provide clear and prominent notice that misuse of spoofing is a violation of Federal law. Finally, NNEDV strongly urges the Commission not to promulgate a rule exempting third-party spoofing service providers, such as SpoofCard, from the criminal and civil liability imposed by the Truth in Caller ID Act.

¹ *Rules and Regulations Implementing the Truth in Caller ID Act of 2009*, WC Docket No. 11-39, Notice of Proposed Rulemaking, F.C.C. 11-41, ¶ 39 (proposed Mar. 9, 2011).

I. The Commission should not Require Verification of Authority to Spoof a Number

NNEDV urges the Commission not to adopt the Department of Justice recommendation to require spoofing providers “to make a good-faith effort to verify that a user has the authority to use the substituted number, such as by placing a one-time verification call to that number.”² A verification requirement would curtail or prevent legitimate use of spoofing to protect victims. This requirement is inconsistent with the intent expressed in both House and Senate Committee Reports. The House Committee on Energy and Commerce recognized the importance of caller ID spoofing for protecting victims of domestic violence stating, “domestic violence shelters sometimes use spoofing...for protective purposes...to protect [shelter residents’] identity.”³ Many phones “are set to refuse blocked or private calls,” and it is therefore “important for domestic violence shelters to transmit caller ID information so a call is completed” and potentially “necessary to alter the caller ID information to ensure safety.”⁴ Further, the plain language of the Act addresses only intent to “defraud, cause harm, or wrongfully obtain anything of value,” and not authority to spoof a particular number.⁵ Congress decided to adopt an intentionality element in the Truth in Caller ID Act to ensure the statute would only cover criminal and malicious spoofing.⁶ We urge the Commission not to adopt a verification requirement that would endanger victims and “domestic violence shelters that provide false caller ID number to prevent call recipients from discovering the location of victims.”⁷

² *In the Matter of Rules and Regulations Implementing the Truth in Caller ID Act of 2009*, WC Docket No. 11-39, Letter from Lanny A. Breuer, Assistant Attorney General, Department of Justice, to Marlene H. Dortch, Secretary, FCC, at 4 (Jan. 26, 2011).

³ H.R. REP. NO. 111-461, at 3, 6 (2010).

⁴ S. Rep. No. 111-96, at 2 (2009).

⁵ See 47 U.S.C. § 277(e)(1) (2010).

⁶ 156 Cong. Rec. H8378 (daily ed. Dec. 15, 2010) (statement of Rep. Richard Boucher).

⁷ H.R. REP. NO. 111-461, at 6-7 (2010).

In addition, both suggested means of verification would severely hinder the ability of victim service providers to utilize spoofing to protect victims. First, requiring victim service providers to choose from “a pool of alternate numbers that customers could use to place spoofed calls,” has many of the disadvantages of blocked caller ID. Abusers would be able to determine that a caller ID is spoofed – since it belongs to the pool – and reject the call as they would a call with blocked caller ID.⁸ This would be especially problematic, for example, when a victim living in a shelter needs to call an abuser as part of a court order to discuss custody issues. Further, it is likely that some phones or services would block all spoofed calls, as they currently block calls with blocked caller ID, which would hinder victims’ ability to contact their abusers when necessary.⁹

Second, requiring spoofing services “to verify that the substitute number belongs to the user by placing a one-time verification call to that number” would severely limit victims’ and victim service providers’ ability to use spoofing effectively for protective purposes.¹⁰ Because abusers might be reticent to answer calls from certain numbers, or more likely to answer calls from a specific number, it would be problematic for a shelter or victim to seek permission to call from each new number.¹¹ NNEDV believes that subjecting victim service providers to either requirement would be detrimental to their use of spoofing to protect victims.

II. The Commission’s Authority to Regulate Spoofing Service Providers

NNEDV agrees with the Department of Justice that the Commission has the statutory authority to regulate third-party spoofing service providers. As the Minnesota Attorney General

⁸ See Comments of NNEDV, at 3.

⁹ See *id.* at 10.

¹⁰ Comments of Department of Justice, at 4.

¹¹ Cf. *The Truth in Caller ID Act of 2006: Hearing on H.R. 5126 Before the Subcomm. On Telecommunications and the Internet of the H. Comm. on Energy and Commerce*, 109th Cong. 9-10 (2006) (statement of Cindy Southworth, Director of the Safety Net Project, National Network to End Domestic Violence).

notes, spoofing services “provide the gateway” for criminal and fraudulent caller ID spoofing.¹² Indeed, as the Department of Justice states, “even where the provider is not aware that its service is being used for illicit means, the service remains instrumental to the unlawful conduct of the calling party.”¹³ NNEDV’s Comments document the advertising and user testimonials posted on the websites leading spoofing services, which advocate harmful uses of spoofing, “including harassment, intimidation, threats, and stalking.”¹⁴ Without regulations, the Commission may have trouble staunching the tide of spoofing done to “defraud, cause harm, or wrongfully obtain anything of value.”¹⁵ For example, TelTech Systems, the owner of SpoofCard, acknowledges in its Comments that it “frequently...becomes aware of fraudulent or other criminal activity that is targeted at third parties,” and states that it has made a “business decision” not to report large amounts of the criminal activity of which it becomes aware.¹⁶

Regulating unmasking services and requiring spoofing providers to provide clear and prominent notice that warns its users of criminal and civil liability for violations of the Truth in Caller ID Act are within the Commission’s authority under that Act, and are reasonably ancillary to the effective performance of its responsibilities under the Communications Act of 1934.¹⁷

III. The Commission should not Promulgate an Exemption for Third-Party Spoofing Service Providers

NNEDV strongly opposes the proposal by TelTech Systems and Itellas Communications requesting the Commission exempt third-party spoofing service providers from any liability

¹² Comments of Office of Minnesota Attorney General, at 2.

¹³ Comments of Department of Justice, at 8.

¹⁴ Comments of NNEDV, at 6.

¹⁵ 47 U.S.C. § 227(e)(1) (2010).

¹⁶ Comments of TelTech Systems, at 12, 14.

¹⁷ Comments of Department of Justice, 8-14. The Communications Act of 1934 provides the Commission with “broad authority to regulate interstate telephone communications.” Comments of Department of Justice, at 10 (quoting *Global Crossing Telecomm., Inc. v. Metrophones Telecomm., Inc.*, 550 U.S. 45, 48 (2007)).

under the Truth in Caller ID Act.¹⁸ The primary business of third-party spoofing service providers such as SpoofCard, Itellas Communications, BluffMyCall.com, and Phone Gangster, is to offer the public the ability to easily transmit falsified caller ID for non-business purposes. Many of these services emphasize that they can be used for “fun,” “gags,” or “pranks.”¹⁹ However, as noted in NNEDV’s Comments, SpoofCard’s “Real Stories/Uses” website provides several examples of its users using the spoofing for intimidation, harassment, and stalking.²⁰

TelTech Systems argues that they merely “transmit” spoofed IDs.²¹ While this may be true in certain cases, the Commission should not provide a blanket exemption from liability to an industry that is serving as a conduit for harassment, stalking, and intimidation. The intent requirement in both the Act and proposed regulation offers sufficient protection from liability for legitimate spoofing while ensuring that malicious spoofers and spoofing service providers will be held accountable for their misconduct. Spoofing service providers are sophisticated parties and capable of navigating the legal landscape of regulation without a specific exemption. Spoofing service providers are the party that most directly profits from spoofing and Congress intended to regulate their trade. The Commission should not exempt spoofing service providers from liability.

IV. Conclusion

NNEDV agrees with the Department of Justice that the Commission has statutory authority to regulate spoofing service providers, and urges the Commission to require spoofing services to provide clear and prominent notice that misuse of spoofing is a violation of Federal law. Further, NNEDV requests the Commission not exempt third-party spoofing service

¹⁸ See Comments of TelTech Systems, at 15-17; Comments of Itellas Communications, at 9-10.

¹⁹ See Comments of NNEDV, at 5-6, 12-14.

²⁰ *Id.* at 5 (citing *SpoofCard Real Stories/Uses*, SPOOFCARD (last visited Mar. 29, 2011), <http://www.spoofcard.com/stories>).

²¹ Comments of TelTech Systems, at 15-16.

providers, such as SpoofCard, from criminal and civil liability imposed by the Truth in Caller ID Act. Finally, NNEDV urges the Commission not to require verification of authority to spoof a particular caller ID in order to avoid unduly burdening victims using spoofing for legitimate purposes.

Respectfully submitted,

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